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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/852,225	05/09/2001	Mitsuru Akaike	M1596-226	4231
7278	7590	11/17/2003	EXAMINER	
DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			MORRISON, NASCHICA SANDERS	
		ART UNIT	PAPER NUMBER	
		3632		

DATE MAILED: 11/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/852,225	AKAIKE, MITSURU	
	<b>Examiner</b>	<b>Art Unit</b>	
	Naschica S Morrison	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 15 October 2003.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \*    c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)                    4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)                    5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                    6) Other: \_\_\_\_\_ .

### **DETAILED ACTION**

This is the third Office Action for serial number 09/852,225, Stopper Device and Telescopic Unit, filed on May 9, 2001. Claims 1-12 are pending.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/15/03 has been entered.

#### ***Allowable Subject Matter***

The indicated allowability of claims 8 and 12 is withdrawn in view of the reference to Groschupp. Examiner apologizes for any inconveniences afforded Applicant.

#### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Admitted Prior Art of Figs. 5, 6, and 11 (APA) in view of U.S. Patent 2,282,295 to Olson and further in view of DE 3441225 to Grouschupp. With regards to claims 1-12, APA

discloses all of the limitations of the claims except the stoppers (2) each having a first diameter at the first end being greater than a second diameter of the second end (i.e. tapered) to form a continuously tapered shape and the first and second ends of abutting stoppers having substantially the same outer dimensions or diameter. Olson teaches a tripod leg assembly including a stopper (36) having a tapered shape with a diameter gradually increasing from the second end (adjacent 40) to the first end (adjacent 37). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the stoppers (2) to taper from top to bottom as an alternative design as taught by Olson since it has been held that a change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966). Grouschupp teaches a tripod leg assembly (fig. 1) including a plurality of stacked stoppers (20, 25, 30) having the same outer dimensions (i.e. width and length). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the first and second ends of abutting stoppers to have substantially the same outer dimensions and/ or diameter as disclosed and inherently taught by Grouschupp and further since it has been held that a change in the size of a prior art device is a design consideration within the skill of the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA 1955).

***Response to Arguments***

Applicant's arguments regarding claims 1-7 and 9-11 have been fully considered but they are not persuasive. Applicant's arguments regarding the limitation "same outer dimension" in claim 9 are moot in view of the new grounds of rejection above.

Regarding Applicant's argument that Olson does not teach more than one stopper supporting member, examiner acknowledges that Olson does not teach the "stacking arrangement" as claimed; however, Olson *has not* been relied upon to teach these claim limitations as detailed in the rejection above. The Admitted Prior Art (see Fig. 11 expressly) has been relied upon to teach the claim limitations related to the plurality of stopper supporting members.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. 2002/014812 to Edelen et al, 2003/0042388 to Peterson, 6536723 to Nakatani, and 2003/0090904 to Ching discloses telescopic leg assemblies relevant to the present invention.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Naschica S. Morrison, whose telephone number is (703) 305-0228. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Leslie Braun can be reached at 703-308-2156. The fax machine telephone number for the Technology Center is (703) 872-9306.

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Any inquiry of a general nature or relating to the status of this Application should be directed to the Technology Center receptionist at (703) 872-9325.

*Naschica S. Morrison*  
Patent Examiner  
Art Unit 3632  
11/7/03

  
Korie Chan  
Primary Examiner  
Art Unit 3632